JD(SF)–39–12
Las Vegas, Nevada

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SIX STAR CLEANING & CARPET SERVICES, INC., d/b/a SIX STAR JANITORIAL

and

Cases 28-CA-023491
28-CA-070356

GENE COLLINS d/b/a SOUTHERN NEVADA FLAGGERS & BARRICADES

and

Case 28-CA-023493

FLOPPY MOP, INC.

and

Cases 28-CA-023492
28-CA-070356

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 872, AFL-CIO

Michael E. Werner, Esq., of Overland Park, Kansas,
for the General Counsel.

Berna L. Rhodes-Ford, Esq.
(Rhodes-Ford & Associates, P.C.),
of Henderson, Nevada, for the Respondents.

David Rosenfeld, Esq. (Weinberg, Roger & Rosenfeld),
of Alameda, California, for the Charging Party.

DECISION

Statement of the Case

CLIFFORD H. ANDERSON, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on April 17–18, 2012. The Laborers' International Union of North America, Local No. 872, AFL–CIO (the Union or the Charging Party) filed the charges on May 4, 2011, and December 7, 2011, against Six Star Cleaning & Carpet Services, Inc. d/b/a Six Star Janitorial (Respondent Six Star or Six Star) in Cases 28–CA–023491 and 28–CA–070356 respectively. The Union filed a charge on May 4, 2011, against Gene Collins d/b/a Southern Nevada Flaggers and Barricades (Respondent Southern Nevada Flaggers or Southern Nevada Flaggers) in Case 28–CA–23493. The Union filed charges against Floppy Mop, Inc. (Respondent Floppy Mop or

Floppy Mop), on May 4, 2011, and December 7, 2011, in Cases 28–CA–24392 and 28–CA–070356 respectively.[1]

The General Counsel issued individual complaints against all three Respondents on January 31, 2012. The trials were scheduled to proceed individually. At trial in the Respondent Six Star case, the parties to each of the three above captioned actions jointly moved to consolidate the above three cases into a single case for purposes of trial and decision. The motion was granted, the cases consolidated, and the cases thereafter proceeded as a single action. Posthearing briefs were timely submitted by the parties.

The complaints allege that the Respondents individually failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees by refusing to furnish information requested by the Union in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

Findings of Fact

On the entire record, including my observation of the demeanor of the witnesses, and the posthearing briefs and other filings of the parties, I make the following findings of fact

I. Jurisdiction

A. Respondent Six Star

At all material times the Respondent Six Star has been a Nevada corporation with an office and place of business in Las Vegas, Nevada, where it has been engaged in the business of providing cleaning services to commercial contractors.

During the 12 month period ending May 4, 2011, a representative period, the Respondent Six Star, in conducting its business operations, provided services in excess of $50,000 for Tishman Construction, an enterprise directly engaged in interstate commerce within the State of Nevada.

Based on these uncontested facts, I find the Respondent Six Star is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. Respondent Southern Nevada Flaggers

At all material times the Respondent Southern Nevada Flaggers has been a sole proprietorship owned by Gene Collins with an office and place of business in Las Vegas, Nevada, where it has been engaged in the business of providing flagging, barricade, and janitorial services to contractors.

During the 12 month period ending May 4, 2011, a representative period, the Respondent Southern Nevada Flaggers, in conducting its business operations, provided services in excess of

[1] All dates are in 2011 unless otherwise indicated.

$50,000 for Perini Construction, an enterprise directly engaged in interstate commerce within the State of Nevada.

Based on these uncontested facts, I find the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

C. Respondent Floppy Mop

At the times set forth below, Respondent Floppy Mop has been a Nevada state corporation, with an office and place of business in Las Vegas, Nevada, where it has been engaged in the business of providing cleaning services to residential and commercial contractors.

The parties do not dispute the application of the Board's lead case establishing a jurisdictional standard for gross inflow of revenue of at least $50,000, *Siemons Mailing Service,* 122 NLRB 81, 83–84 (1958), and subsequent cases. Nor are the monthly revenues received by Floppy Mop from customers who were directly engaged in interstate commerce in dispute. There is however a dispute respecting what 12 month period is appropriate on the facts of this case to test the relevant $50,000 annual minimum for Floppy Mop.

The General Counsel originally pled jurisdiction based on the 12 month period ending on May 4, 2011—the date the initial charge was filed—as he did in the other two cases herein. Following his investigation of Floppy Mop's subpoenaed business records at trial, the General Counsel conceded the period pled in the complaint did not encompass $50,000 in qualifying revenue. He then moved to amend the jurisdictional element of the complaint as to Floppy Mop to allege the 12 month period for the assertion of jurisdiction to be the 12 month period of July 1, 2010, through June 30, 2011. Counsel for Floppy Mop opposed the amendment arguing the period set forth in the proposed amendment was improper. I granted the amendment, but informed the parties I expected them to brief the issue of the appropriate time for jurisdictional testing.

Counsel for Floppy Mop argues that the General Counsel erred by not using a traditional 12-month representative period to determine jurisdiction, and instead improperly applying an arbitrary timeframe that was used merely to squeeze Floppy Mop's revenues past the Board's $50,000 threshold. She notes on brief at 4:

> The Board has consistently used the figures for the most recent calendar or fiscal year of the employer or for the 12-month period immediately preceding the hearing before the Board. *International Hod Carriers, Building and Common Laborers Union of America, Local #1082, and its Agent, George Tarr (E. L. Boggs Plastering Company), et al.*, 150 NLRB 158 (1964), (citing *Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local 386 (Hobbs-Parsons Co.)*, 128 NLRB 1031).
>
> * * * *
>
> Had the General Counsel used one of the established calculation periods, jurisdiction clearly would not exist.

The General Counsel argues on brief at 15:

The 12-month period immediately preceding June 30, 2011, is an appropriate period for analyzing whether Floppy Mop should be subjected to the Board's jurisdiction. This 12-month period not only encompasses the date in which Floppy Mop refused to provide the requested information, but it also includes the date that the Union filed the first unfair labor practice charge. See *Valentine Painting,* 331 NLRB [883 (2000)] at 884 (finding jurisdiction based on a period that "encompasse[d] the period in which the unfair labor practice occurred."). Floppy Mop's suggestion that the selected period is inappropriate seemingly places form above substance and overlooks "the important consideration that a 1-year period may be expected to be representative of the employer's operations." Id.

In addressing the issue presented, it is well to consider the period at issue in light of the "important consideration" cited by the General Counsel, supra, that the period must "be expected to be representative of the employer's operations." *Valentine Painting,* 331 NLRB 883, 884 (2000). Respondent Floppy Mop suffered a hiatus in business starting in late 2009 and did not obtain new revenue producing work until June 2010 in which month it had revenue for the work of a single day—June 25, 2010—obtaining total revenues for the month of $207.50.

Things picked up for Floppy Mop the following month and for a year thereafter. For the 13-month period July 1, 2010, through July 31, 2011, 13 months, it received revenue from customers who were directly engaged in interstate commerce in the monthly amounts listed below. At that point it ceased operations.

July 2010	-$ 830.00
August 2010	-$ 830.00
September 2010	-$ 830.00
October 2010	-$3729.99
November 2010	-$2668.57
December 2010	-$5412.62
January 2011	-$5580.61
February 2011	-$5580.61
March 2011	-$5580.61
April 2011	-$8780.61
May 2011	-$8055.61
June 2011	-$5880.62
July 2011	-$4987.99

Floppy Mop's dollar revenue from customers who were directly engaged in interstate commerce for the 12 month period July 1, 2010, through June 30, 2011, totals $53,759.85. The total dollar volume for the 12 month period August 1, 2010, through July 31, 2011, totals $57,917.84. Thus, once business resumed, Floppy Mop's revenues accrued at an annual rate over the $50.000 minimum necessary for the assertion of jurisdiction until it ceased operations.

The unusual situation of a pause and resumption in an employer's revenue stream from customers who were directly engaged in interstate commerce and that circumstance's effect on the appropriate period for testing annual volume for determining jurisdiction has been squarely addressed by the Board in *Sequim Lumber & Supply, Co*., 123 NLRB 1097 (1959). In *Sequim* the employer had experienced reduced operations and revenues and thereafter resumed increased

operations with increased revenue. The Board specifically held that jurisdiction could be taken based on the resumed revenue period. I find that holding controls the situation here. Floppy Mop's monthly revenue stream in the table above followed a period of essentially no revenue and the new restored revenue stream extended for a period in excess of 12 months and flowed at an annual rate in excess of $50,000. Thus the new 1-year period could reasonably be expected to be representative of the employer's operations. As noted above such a 12 month period totals in excess of $50,000 from customers who were directly engaged in interstate commerce.

Given all the above, I find that Floppy Mop has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

The pleadings establish, there is no dispute, and I find the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Collective-Bargaining Relationship

On or about July 1, 2005, the Associated General Contractors (the Association) and the Union entered into a collective-bargaining agreement (the Association Agreement) whereby the Association recognized the Union as the exclusive collective-bargaining representative of the Association's member employers employees in the unit set forth below. I find that bargaining unit is appropriate for purposes of collective bargaining based on Section 9(a) of the Act.

On or about June 6, 2005, the Respondent Six Star Janitorial entered into a Memorandum of Agreement with the Union which at all material times bound the Respondent Six Star to the terms and conditions of the Association Agreement, and its successive collective-bargaining agreements, the most recent of which is effective July 1, 2010, through June 30, 2011. Floppy Mop also joined the Association. By these actions the Respondent Six Star recognized the Union as the exclusive collective-bargaining representative of the Respondent Six Star's employees in the unit set forth below.

At all times since on or about June 6, 2005, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent Six Star's employees in the Six Star Janitorial unit set forth below.

On or about February 24, 2009, the Respondent Southern Nevada Flaggers and Barricades entered into a Memorandum of Agreement with the Union which at all material times bound the Respondent to the terms and conditions of the Association Agreement, and successive collective-bargaining agreements, the most recent of which is effective July 1, 2010, through June 30, 2011. Southern Nevada Flaggers also became signatory to the Master Agreement at that time. By these actions the Respondent Southern Nevada Flaggers and Barricades has recognized the Union as the exclusive collective-bargaining representative of Respondent Southern Nevada Flaggers and Barricades employees in the unit set forth below.

At all times since on or about February 24, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent Southern Nevada Flaggers and Barricades employees in the unit set forth below.

On or about July 16, 2007, the Respondent Floppy Mop entered into a Memorandum of Agreement with the Union which at all material times bound the Respondent Floppy Mop to the terms and conditions of the Association Agreement and successive collective-bargaining agreements, and by which the Respondent Floppy Mop has recognized the Union as the exclusive collective-bargaining representative the Respondent Floppy Mop's employees in the Floppy Mop unit set forth below. Floppy Mop also became signatory to the Master Agreement in July 2007.[2] By these actions the Respondent Floppy Mop recognized the Union as the exclusive collective-bargaining representative of the employees in the unit set forth below.

At all relevant times since on or about July 16, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent Floppy Mop's employees in the unit set forth below.

The following employees of the Associated General Contractors, including each of the Respondents, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (herein called the Unit):

> All employees of the Associated General Contractors, including each of the Respondents, employed to perform or performing construction work, as such employees and construction work are respectively more particularly defined in Article II, Section A and Article IX of the Association Agreement, described below in paragraph 5(c), throughout the area known as Southern Nevada, more particularly described as the counties of Clark, Lincoln, Esmeralda, Nye, and White Pine (south of U.S. Hwy. 6). It is recognized that work covered by the Construction Project Agreement at the Nevada Test Site shall be excluded from the coverage of this Agreement.

At all relevant times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the employees of Associated General Contractors, including each of the Respondents.

IV. The Alleged Unfair Labor Practices

A. Background

At all relevant times, the Respondents Six Star, Floppy Mop, and Southern Nevada Flaggers were independently owned and operated janitorial contractors. Additionally, all three contractors were signatory to the Union's Master Agreement that had been established between the Union and the Las Vegas Chapter of the Associated General Contractors (AGC) in July of 2005. The Master Agreement requires, amongst other things, that contractors staff their projects solely by way of the Union's referral service. Another important aspect of the Master Agreement

[2] In 2010, Floppy Mop withdrew from the AGC and informed the Union that it wished to terminate their existing contract as soon as legally allowable. (R. Exh. 5). Floppy Mop stopped applying the terms of the Master Agreement to its employees in 2010, and further ceased all operations in July 2011.

is that contractors must pay certain contributions to the applicable trust funds to cover employees' fringe benefits. Finally, the Master Agreement also requires in Article XXIV, Section I that "The books and records of the Employer shall be made available at reasonable times for inspection and audit by the accountants or other representatives of the [Trust] Funds." Id.

Six Star first began its operations in 2001 and incorporated in 2007. In June 2005, Six Star signed a Memorandum Agreement with the Union that bound the contractor to the terms of the above mentioned Master Agreement between the AGC and the Union. Southern Nevada Flaggers began its business in February 2009 and also became signatory to the Master Agreement at that time. Both Six Star and Southern Nevada Flaggers are still presently party to the collective-bargaining agreement and remain members of the AGC.

Floppy Mop commenced its operations in 2006, and became signatory to the Master Agreement in July 2007. In 2010, Floppy Mop withdrew from the AGC and informed the Union that it wished to terminate their existing contract as soon as legally allowable. Floppy Mop stopped applying the terms of the Master Agreement to its employees in 2010, and ceased all operations in July 2011.

All three Respondent contractors were at one time or another accused of being delinquent in their Trust Fund contributions. In accordance with the Master Agreement, the Union and the Southern Nevada Laborers Joint Trust Funds (Trust Fund) therefore placed the Respondents on a "delinquency list," which authorized general contractors to withhold payments and remit the amounts instead to the Trust Fund. The Union also refused to refer employees to the Respondents, as permitted by the Master Agreement, until the Trust Fund issues were resolved.

Eventually, it was determined that Six Star owed roughly $160,000 to the Trust Fund, and so with the assistance of the AGC, Rose Mary Phillips, the president of Six Star, negotiated a repayment plan with the Union and Trust Fund. Once that plan was approved, the Union began referring employees to Six Star again. Southern Nevada Flaggers was also sued for alleged delinquency; however in their case it was actually determined that they were not delinquent, though they had to pay attorneys' fees. The extent and severity of Floppy Mop's alleged delinquency was never clearly established in the record; nonetheless, Floppy Mop never resolved its contribution issues with the Trust Fund, and as a result, the Union stopped supplying the contractor with employees and work. Floppy Mop terminated its union contract, and subsequently worked on four separate, nonunion jobs from 2010 through 2011 until it finally shut down its operations.

Witnesses for all three Respondents described constant turmoil between them and the Union over the years. Threats, accusations, and long periods of silence made for a poor relationship at best between the parties. Feeling they had been wronged in various ways, the Respondents ultimately filed a lawsuit against the Union in April of 2011. The lawsuit complaint alleged race discrimination and breach of contract, and was based substantially on the Respondents' continued placement on the delinquency list. In her testimony, Ms. Phillips explained that she was informed by the Union's business agent that "there were other contractors out there, non-African-American, that [were] way more delinquent than I was, and their name[s]

had never hit the Delinquent List." The lawsuits breach of contract claim was essentially in regard to the Union's alleged lack of adherence to the Master Agreement.

B. The Information Request

In response to the charges brought against the Union by Six Star, Floppy Mop, and Southern Nevada Flaggers, the Union's counsel, David Rosenfeld, sent the Respondents' then counsel, Matthew Callister, two letters on April 14, 2011. The first letter alleged that the Respondents' complaints were baseless, and that because of the lawsuit, the Union was consequently filing a grievance against the Respondents "for their failure to follow the procedural provisions of the Master Agreement." The second letter stated in part as follows:

> Your clients in effect allege that the Local has breached the collective bargaining agreement. In order to investigate the Union's grievance and to investigate your clients' claims that the collective bargaining agreements have been breached, please provide the following information for each of your clients:
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> 1. A list of all jobs performed by your client for the period of January 1, 2005 to present.
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> 2. For each job listed provide the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.
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> 3. For each job listed above, please provide copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.
>
> 4. Please provide a copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.
>
> . . .
>
> These questions are being asked not as part of the litigation. They are being asked rather because your clients have made claims of breach of the collective bargaining agreement. The Local needs that information in order to evaluate these claims and determine how best to administer the collective bargaining agreements and the bargaining relationships. The information is furthermore needed in order for Local 872 to pursue its grievance against your clients for their failure to utilize the Grievance procedure.

On April 25, the Union's attorney sent another letter to the Respondents' counsel, which enclosed a copy of the April 14 information request, and reiterated that the Union needed the information "in order to administer the contract and represent the employees."

On April 27, the Respondents' attorney Mr. Callister responded to the union information requests. The letter initially stated: "Per your attached correspondence, we will not be providing the information you have requested from our clients. As further explained below, the crux of our claims falls outside of the collective bargaining agreement." The letter then enumerated various reasons why the Respondents' complaints should not be submitted to arbitration. This letter the

only communication sent by the Respondents to the Union regarding the Union's information request.

On May 3, the Union's attorney responded to the Respondent counsel's—April 27 letter as follows:

> I want to be clear about the reason for that information request. Your clients claim that there have been repeated breaches of the agreement and other conduct which interferes with the agreement committed by Local 972 and Tommy White as Business [M]anager. The Union takes such allegations seriously although we believe that these claims are totally baseless. In order to investigate those claims and in order to administer the contract, the Union requested that information. Your clients' failure to provide that information in order for the Union to administer the collective bargaining agreement is a breach of your client's obligations under the National Labor Relations Act.
>
> . . .
>
> Please keep in mind that we take the position that the lawsuit was a violation of the Collective Bargaining Agreement because it breached your clients' duty to grieve any disputes. As a result, we will be seeking to pursue this in a grievance procedure . . .

No further correspondence was exchanged until September 13, when the Union's attorney sent Respondents' counsel a letter restating the Union's information request. There was no response to this letter. The Union's attorney sent a similar letter on October 7 to Respondents' counsel with copies of the September 13 and April 14 letters enclosed. The September 13 letter stated, "I have no choice but to file another unfair labor practice charge against these [three] employers."

From September 12 through 14, 2011, the Respondents participated in a protest outside of the Union's National Convention in Las Vegas. During that event, a heated exchange occurred between Gene Collins, the owner of Southern Nevada Flaggers, and Tommy White, the Union's business agent, regarding wages that Collins was paying his employees. In October or November of 2011, Rose Mary Phillips, the President of Six Star, appeared on a local radio show where she voiced her concerns about the on-going discrimination occurring between the Union and the African American contractors.

Six Star, Floppy Mop, and Southern Nevada Flaggers never produced the requested information to the Union.

V. Analysis and Conclusions

The fundamental issue in contention is whether or not the Respondents were obligated under their statutory duty to bargain in good faith with the Union as set forth in Section 8(a)(5) of the Act to furnish the requested information to the Union under all the circumstances presented.

A. The Basic Law

Section 8(a)(5) of the Act obligates employer to bargain in good faith with the labor organization that represents their employees. As part of that obligation employers have a good faith duty to furnish information to the Union, when requested, that is relevant and necessary to fulfilling the Union's statutory duties and responsibilities as the employer's employees' bargaining agent. *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 435–436 (1967). The Supreme Court has explained that withholding such information is not necessarily a per se violation, and that instead, "[e]ach case must turn upon its particular facts . . . [t]he inquiry must always be whether or not under the circumstances of the particular case the statutory obligation to bargain in good faith has been met." *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149, 153–154 (1956).

One of the requirements for a union's information request is that the information sought must be relevant and necessary to the union's role as employee representative. *North Star Steel Co.*, 347 NLRB 1364, 1368 (2006). The Board has made it clear however that the "relevant and necessary" standard is a broad and liberal, "discovery-type standard," which only requires a "probability that the desired information is relevant." Id. Furthermore, the Board has found that information relating to employee terms and conditions of employment, including wage and wage-related data, is presumptively relevant. *W. B. Skinner, Inc.*, 283 NLRB 989, 990 (1987). When information sought is not presumptively relevant, the Board requires the requesting union show a reasonable objective basis for requesting the information. See *H & R Industrial Services, Inc.*, 351 NLRB 1222 (2007).

Another requirement for information requests is that the Union must make the request in good faith. *Island Creek Coal Co.*, 292 NLRB 480, 492 at fn. 14 (1989). In *Hawkins Construction Co.*, 285 NLRB 1313, 1314 (1987), the Board explained that, "[t]he request must be made in good faith and this requirement is met if at least one reason for the demand can be justified." In *Watcher Construction*, 311 NLRB 215, 216 (1993), the Board held that, "although an employer need not comply with an information request where the sole purpose for the request is to harass the employer, the good-faith requirement will be satisfied where any of the union's reasons for seeking the information can be justified."

Neither party contests these general standards regarding labor organization information requests of employers under Board law. Rather, the Respondents assert, and the General Counsel and the Charging Party attack as insufficient, the proposition that the factual context of the requests excuse the Respondents from any duty to comply with the Union's requests.

B. Relevance of the Information Request

As stated above, one requirement for a proper information request is that the information sought be relevant to the Union's duties and obligations. The information requests to each of the Respondents seeks information respecting work done by the Respondents, names of employees who worked the jobs done, and payroll and trust fund records and report forms respecting the work. The Union in its information request asserted:

> [The information request questions] are being asked … because your clients [the Respondents] have made claims of breach of the collective bargaining agreement. The

Local needs that information in order to evaluate these claims and determine how best to administer the collective bargaining agreements and the bargaining relationships.

The General Counsel and the Charging Party assert that the Respondents have not effectively contested the relevance of the requested material. The General Counsel notes that Rose Mary Phillips, the President of Six Star, admitted in her testimony that the requested information was relevant to the Union's investigation of Respondent's compliance with their trust fund obligations. Furthermore, the General Counsel points out that Taylor Andrews, the former labor relations director for the AGC, additionally testified that such information requests were commonly sought by unions.

The Respondents argue on brief that the information requested did not directly relate to the bargaining unit employees, and therefore is not presumptively relevant and because the requested information is not presumptively relevant, they are not obligated to produce it.

Contrary to the argument of the Respondents, I find the information is relevant to represented employees wages hours and working conditions. The information in effect seeks information to identify work done under the contract, who did the work and how those who did the work were compensated in wages and in fringe contributions. Such information generally relating to bargaining unit employees, including working terms and conditions and wage data, is presumptively relevant. *W. B. Skinner, Inc.*, 283 NLRB 989, 990 (1987).

Based on all the above, I find the information sought of the Respondents by the Union was relevant to the Union's duty to represent the Respondent's employees.

C. The Good-Faith Requirement

The crux of Respondents' defense is that they had no duty to furnish the requested information because the requests were made in bad faith. In general, the Respondents have the burden of establishing bad faith in such situations, and otherwise good faith is presumed. *Island Creek Coal Co.*, 292 NLRB 480, 492 fn. 14 (1989).

The Respondents argue that the initial request letter, sent on April 14, 2011, implies bad faith in and of itself because it asks for information that does not relate to the bargaining unit employees and thus operates as a form of harassment. Additionally, Respondent claims that the Union requested this information in an attempt to circumvent standard discovery in the concurrent litigation. The Respondents finally argue that the timing of the requests indicate bad faith in that they were consistently made immediately after each action the Respondents took against the Union.

The General Counsel and the Charging Party deny that the record supports any possible finding that the Union's information request was made in bad faith. They argue that issues regarding Respondents' trust fund delinquencies were ongoing, and that therefore the information asked for was not only relevant, but necessary to the Union's administration of the terms regarding benefits in the bargaining agreement. The Union argues further argue that the timing of the requests was not vindictive, but merely responsive to the fact that the Respondents had just brought a breach of contract claim against them. Finally, because of the claims brought

against the Union in federal court, the General Counsel argues that the request was also necessary in the Union's contemplation of filing a grievance against the Respondents for failing to exhaust contractual remedies under the Master Agreement.

In *Hawkins Construction Co.*, 285 NLRB 1313 (1987), enf. denied 857 F.2d 1224 (8th Cir. 1988), the Board considered a case with facts very similar to the present action. There, the union made an information request 2 days after the respondent-employer filed a lawsuit against the union. The administrative law judge found that, although the information requested was relevant to the union's functions as a collective-bargaining representative, the request was made entirely in bad faith as evidenced by its timing. Id. at 1314. The Board overturned the administrative law judge's decision however, stating:

> Assuming *arguendo* that the Union knew the Respondent had filed a lawsuit 2 days earlier, there is nothing to indicate that the Union's motivation in instituting the request was to retaliate against the Respondent. Moreover, the Respondent failed to introduce any evidence to support its contention that the lawsuit had provoked the information request. *The timing of the request, without more, is insufficient to establish that the Union was not motivated by a good-faith attempt to secure information necessary for policing its collective-bargaining agreement.*(emphasis added) *Id.* at 1315.

Immediately prior to this statement, the Board also explained that, "[t]he Union faced with renewed charges . . . chose to investigate further by submitting an information request to the Respondent. The Union was free to select the course of action it considered appropriate under the circumstances." 285 NLRB 1313 at 1314–1315. *Hawkins Construction Co.* thus makes two findings relevant to the present case. First, the timing of an information request on its own cannot establish bad faith. Second, it is within a union's rights to request information after learning of charges being filed against it by an employer.

Without evidence directly indicating the information requests were retaliatory, timing alone does not establish bad faith on the part of the Union. Furthermore, the Respondents argument that the initial letter requesting information itself implied bad faith is not persuasive. As noted earlier, the information requested was directly related to the bargaining unit employees, and as *Hawkins Construction Co.* teaches, it is within the Union's right to select such a course of action in dealing with and handling the impending charges. 285 NLRB 1313 at 1314–1315.

Finally, Respondents' claim that the information request was being used to get around standard discovery in the concurrent litigation also fails to demonstrate bad faith. In *Westinghouse Electric Corp.*, 239 NLRB 106, 111 (1978), the Board ruled that,

> [t]he fact that other pending litigation exists does not offer an employer a defense to providing information . . . the Board is not divested of its jurisdiction because a party has a contractual defense, which is subject to litigation before a state or Federal court.

The Board held there that the existence of ongoing litigation did "not restrict the Union's statutory right under the Act to relevant information." Id. Similarly, in the present case, just because charges have been brought concurrently in Federal court does not mean that the Union is limited for that reason from requesting related information that is necessary to its role as a

bargaining representative. Consequently, without more evidence, the information cannot be found to have been requested in bad faith.

It is also important to note that the requirement is not just that the Respondents show Union bad faith, but that they show that the *only* purpose for the request was a bad-faith purpose. *Hawkins Construction Co.*, 285 NLRB 1313, 1314 (1987). Thus even if Respondents had met their burden in showing that the request was made in bad faith, the existence of even one legitimate purpose would nonetheless render the request valid. Having named a number of legitimate purposes in their initial letter to Respondents, and those not having been disproved, the Union's request cannot be ignored even if a bad-faith intention lurks in the background of that request. Consequently, the Respondents have not relieved themselves of their duty to furnish the requested information.

Based on all the above, the record as a whole, including the briefs of the parties and the demeanor of the witnesses, I find that the Respondents' claim of Union bad faith in making its information request fails.

D. The Unduly Burdensome Defense

The Respondents also argue that the information request was unduly burdensome, citing *Safeway Stores, Inc. v. NLRB*, 691 F.2d 953 (10th Cir. 1982). Looking to the precedent set in the Board's hearing of that case, the Respondents' argument is untimely and improper. In *Safeway Stores, Inc.*, 252 NLRB 1323, 1324 (1980), the Board quoted itself in holding that, "'[i]f there are substantial costs involved in compiling the information . . . requested by the Union, the parties must bargain in good faith as to who shall bear such costs.'" (Quoting *Food Employers Council, Inc.*, 197 NLRB 651 (1972)). In general, the Board maintains that the employer has an affirmative duty to inform the Union that it believes the information request is overbroad and burdensome, at which point the parties should then bargain as to how the costs should be allocated. See *H& R Industrial Services, Inc.*, 351 NLRB 1222 (2007); *Martin Marietta*, 316 NLRB 868 (1995). This means that simply rejecting the information request is not a sufficient action on the part of the employer.

In the instant case, no evidence has been introduced that the Respondents ever communicated to the Union that the information request was unduly burdensome, nor did the Respondents ever attempt to bargain over cost allocation. Instead, the Respondents merely refused to furnish the information at all. Thus given the abovementioned rules, the Respondents have failed to raise the "unduly burdensome" defense at the time of the request, and therefore are still not relieved of their duty to furnish the information.

Additionally, the Respondents assert that all Trust Fund issues had already been resolved, and so consequently there was no legitimate purpose for the documents to be requested by the Union. I do not accept this argument. The Charging Party explicitly stated to the Respondents as part of its information request that the charges the Respondents have brought in Federal court alleging the Union's breech of contract effectively ripened the Union's need to investigate certain Trust Fund issues that may have previously been resolved. Furthermore, because the Trust Funds continue to be an aspect of the collective-bargaining agreement, it cannot be said that an employer's sufficiency of Trust Funds payments are ever "resolved' in any sense of

finality. The Respondents continued to have obligations to the Trust Funds under the bargaining agreement, and therefore just because a previous issue has been fixed does not mean that it is bad faith for the Union to continue to monitor and investigate Trust Fund contributions. Thus Respondents have still not proven a bad-faith purpose in the Union's information request.

E. Duty to Furnish Requested Information Despite Alternative Access

Lastly, the Respondents argue that they should not be required to produce the requested documents because the Trust Fund already had the same information in their possession, and therefore the Union technically also had access to the information.

This argument has been rejected by the Board. It does not matter whether or not the Union technically had access to the requested information via the Trust Funds. In *King Soopers, Inc.*, 344 NLRB 842, 845 (2005), the Board affirmed its well-established precedent that, "a union's ability to obtain requested information elsewhere does not excuse an employer's obligation to provide the requested information." This basic rule disposes of any argument asserting that the Union could have accessed the information elsewhere.

F. Summary and Conclusions

Based on all the above and the record as a whole, including the parties' posthearing filings and careful consideration of the witnesses' testimony and demeanor, I have found that the Union acted in good faith when it requested information from the Respondents that was relevant to the Union's duties and responsibilities as the statutory representative of the Respondents employees. The Respondents at all times failed and refused to comply with the information request and have established no legally sufficient defense to their statutory obligation to do so. I find therefore that the Respondents, and each of them, in failing and refusing to comply with the information request violated Section 8(a)(5) and (1) of the Act as alleged in the complaints.

Conclusions of Law

Given all the above, including the above findings of fact, and based on the record as a whole, including the posthearing briefs of the parties, I make the following conclusions of law

1. The Respondents Six Star Cleaning & Carpet Services, Inc., Floppy Mop, Inc., and Southern Nevada Flaggers and Barricades are, and each of them is, employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondents, and each of them, by failing and refusing to furnish the relevant information requested by the Union in good faith on April 14 and September 13,2011, have individually failed to bargain collectively with their employees' representatives in violation of Section 8(a)(5) of the Act.

4. The unfair labor practices found above have an effect on commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents violated the Act as set forth above, I shall order that they cease and desist therefrom and post remedial Board notices. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. *J. Picini Flooring*, 356 NLRB No. 9 (2010). The posting of the paper notices by the Respondents shall occur at all places where notices to employees are customarily posted. The Respondents will be further directed to provide the Union with the requested information set forth in the consolidated complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[3]

ORDER

The Respondent, Six Star Cleaning & Carpet Services, Inc., its officers, agents, and representatives, shall

1. Cease and desist from failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as a bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the following information requested by the Union in its letters to Respondents' attorney dated April 14, 2011, and September 13, 2011:

i. A list of all jobs performed by Six Star Cleaning & Carpet Services for the period of January 1, 2005 to present.

ii. For each job listed provide the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

iii. For each job listed above, provide copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

iv. Provide a copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the Region, post at its facilities in Las Vegas, Nevada, copies of the attached notice marked "Appendix A."[4] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Six Star Cleaning & Carpet Services' authorized representative, shall be posted by the Respondent Six Star Cleaning & Carpet Services and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent Six Star Cleaning & Carpet Services customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Six Star Cleaning & Carpet Services to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Six Star Cleaning & Carpet Services has gone out of business or closed the facility involved in these proceedings, the Respondent Six Star Cleaning & Carpet Services shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Six Star Cleaning & Carpet Services at any time since May 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Six Star Cleaning & Carpet Services has taken to comply.

The Respondent, Floppy Mop, Inc., its officers, agents, and representatives, shall

1. Cease and desist from failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as a bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the following information requested by the Union in its letters to Respondent's attorney dated April 14, 2011, and September 13, 2011:

i. A list of all jobs performed by Floppy Mop, Inc. for the period of January 1, 2005 to present.

ii. For each job listed provide the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

iii. For each job listed above, provide copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

iv. Provide a copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

(b) Within 14 days after service by the Region, post at its facilities in Las Vegas, Nevada copies of the attached notice marked "Appendix B."[5] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Floppy Mop, Inc.'s authorized representative, shall be posted by the Respondent Floppy Mop, Inc. and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent Floppy Mop, Inc. customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Floppy Mop, Inc. to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Floppy Mop, Inc. has not resumed its business or reopened the facility involved in these proceedings, the Respondent Floppy Mop, Inc. shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Floppy Mop, Inc. at any time since May 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Floppy Mop, Inc. has taken to comply.

The Respondent, Southern Nevada Flaggers and Barricades, its officers, agents, and representatives, shall

1. Cease and desist from failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as a bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the following information requested by the Union in its letters to Respondent's attorney dated April 14, 2011, and September 13, 2011:

i. A list of all jobs performed by Southern Nevada Flaggers and Barricades for the period of January 1, 2005 to present.

ii. For each job listed provide the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

5 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

iii. For each job listed above, provide copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

iv. Provide a copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

(b) Within 14 days after service by the Region, post at its facilities in Las Vegas, Nevada, copies of the attached notice marked "Appendix C."[6] Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent Southern Nevada Flaggers and Barricades' authorized representative, shall be posted by the Respondent Southern Nevada Flaggers and Barricades and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent Southern Nevada Flaggers and Barricades customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent Southern Nevada Flaggers and Barricades to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent Southern Nevada Flaggers and Barricades has gone out of business or closed the facility involved in these proceedings, the Respondent Southern Nevada Flaggers and Barricades shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent Southern Nevada Flaggers and Barricades at any time since May 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent Southern Nevada Flaggers and Barricades has taken to comply.

Dated, Washington DC, August 17, 2012

Clifford H. Anderson
Administrative Law Judge

6 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly:

WE WILL NOT refuse to bargain with Laborers' International Union of North America, Local No. 872, AFL–CIO (the Union) as your bargaining representative in an appropriate bargaining unit of employees by failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as your bargaining representative. The appropriate bargaining unit is:

> All employees of the [Employer and members of the Associated General Contractors] employed to perform or performing construction work, as such employees and construction work are respectively more particularly defined in Article II, Section A and Article IX of the Association Agreement, described below in paragraph 5(c), throughout the area known as Southern Nevada, more particularly described as the counties of Clark, Lincoln, Esmeralda, Nye, and White Pine (south of U.S. Hwy. 6). It is recognized that work covered by the Construction Project Agreement at the Nevada Test Site shall be excluded from the coverage of this Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

WE WILL provide to the Union the information it requested at items 1 through 4 in its letters to our attorney dated April 14, 2011, and September 13, 2011:

i. A list of all jobs performed for the period of January 1, 2005 to present.

ii. For each job listed the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

iii. For each job listed copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

iv. A copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

Six Star Cleaning & Carpet Services, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:
www.nlrb.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.

APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly:

WE WILL NOT refuse to bargain with Laborers' International Union of North America, Local No. 872, AFL-CIO (the Union) as your bargaining representative for appropriate bargaining unit of employees by failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as your bargaining representative. The appropriate bargaining unit is:

> All employees of the [Employer and members of the Associated General Contractors] employed to perform or performing construction work, as such employees and construction work are respectively more particularly defined in Article II, Section A and Article IX of the Association Agreement, described below in paragraph 5(c), throughout the area known as Southern Nevada, more particularly described as the counties of Clark, Lincoln, Esmeralda, Nye, and White Pine (south of U.S. Hwy. 6). It is recognized that work covered by the Construction Project Agreement at the Nevada Test Site shall be excluded from the coverage of this Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

WE WILL provide to the Union the information it requested at Items 1 through 4 in its letters to our attorney dated April 14, 2011 and September 13, 2011.

i. A list of all jobs performed for the period of January 1, 2005 to present.

ii. For each job listed the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

iii. For each job listed copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

iv. A copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

Floppy Mop, Inc.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:
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APPENDIX C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly:

WE WILL NOT refuse to bargain with Laborers' International Union of North America, Local No. 872, AFL-CIO (the Union) as your bargaining representative for appropriate bargaining unit of employees by failing and refusing to provide the Union with requested information that is necessary for and relevant to, the Union's performance of its duties as your bargaining representative. The appropriate bargaining unit is:

> All employees of the [Employer and members of the Associated General Contractors] employed to perform or performing construction work, as such employees and construction work are respectively more particularly defined in Article II, Section A and Article IX of the Association Agreement, described below in paragraph 5(c), throughout the area known as Southern Nevada, more particularly described as the counties of Clark, Lincoln, Esmeralda, Nye, and White Pine (south of U.S. Hwy. 6). It is recognized that work covered by the Construction Project Agreement at the Nevada Test Site shall be excluded from the coverage of this Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the foregoing rights guaranteed under Section 7 of the Act.

WE WILL provide to the Union the information it requested at Items 1 through 4 in its letters to our attorney dated April 14, 2011 and September 13, 2011.

i. A list of all jobs performed for the period of January 1, 2005 to present.

ii. For each job listed the names of the employees who worked on each job, the dates of the job, the location of the job and the nature of the job.

iii. For each job listed copies of all the payroll records for each of the jobs segregated by job. Those records should be provided in electronic format in a manner useable and readable by Local 872.

iv. A copy of all trust fund contribution report forms for each of the jobs segregated by each job and provided if possible in electronic format.

Southern Nevada Flaggers and Barricades
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website:
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